

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

No. C 06-6003 CW

Plaintiff,

v.

FINAL JURY
INSTRUCTIONS

CORT L. POYNER,

Defendant.

DUTY OF THE JURY

Members of the Jury: Now that you have heard all of the evidence, it is my duty to instruct you as to the law of the case. A copy of these instructions will be sent with you to the jury room when you deliberate. You should discard the preliminary instructions; the final instructions control and you need not concern yourselves with differences between them and the preliminary instructions. You must not infer from these instructions or from anything I may have done or said that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all of the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you, whether you agree

1 with it or not. And you must not be influenced by any personal
2 likes or dislikes, opinions, prejudices, or sympathy. That means
3 that you must decide the case solely on the evidence before you.
4 You will recall that you took an oath to do so.

5 In following my instructions, you must follow all of them and
6 not single out some and ignore others; they are all important.

7 **GENERAL BACKGROUND**

8 The Plaintiff in this case is the United States Securities and
9 Exchange Commission, or the SEC, an agency of the United States
10 government, which Congress has authorized to bring civil actions to
11 enforce the federal securities laws. This is a civil trial, not a
12 criminal trial. The Defendant in this case is Cort L. Poyner.

13 A "security" is an investment of money in a commercial,
14 financial or other business enterprise, be it a startup or an
15 established company, with the expectation of profit or other gain
16 produced by the efforts of others. Some common types of securities
17 are stocks, bonds, debentures, warrants, and investment contracts.
18 In this case, the "security" involved is the common stock of The
19 Children's Internet, or TCI.

20 A "publicly reporting company" is a company that files
21 periodic reports on a quarterly and annual basis with the SEC. A
22 small business such as TCI must file a "Form 10-KSB" once a year
23 following the end of the fiscal year for which the report is being
24 filed. In this case, TCI's fiscal year was the same as a calendar
25 year and ran from January 1 to December 31. A small business like
26 TCI must also file a "Form 10-QSB" three times per year with the
27 SEC, with respect to the first, second and third fiscal quarters of
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1 the year.

2 A "publicly trading company" is a publicly reporting company
3 that makes the necessary filings of its annual and quarterly
4 reports with the SEC. Additionally, the company must satisfy the
5 requirements for being listed on an exchange such as the New York
6 Stock Exchange or the NASDAQ so that the company's shares can be
7 bought and sold by public investors in a securities market. In
8 this case, the exchange that TCI wanted to list its shares on is
9 called the "OTC Bulletin Board."

10 A "Form 211" is a form that is approved by an exchange such as
11 the OTC Bulletin Board that allows a particular company's stock to
12 be listed for trading on that exchange.

13 A "restricted share" of stock is a share of stock with a
14 legend on the back which limits the circumstances under which the
15 stock can be sold.

16 **AGREED-UPON FACTS**

17 The SEC and Mr. Poyner have agreed that the following facts
18 are true. This means that, in reaching your verdict, you must
19 treat the following statements of facts as being true and proven.

20 The Children's Internet, or TCI, is a corporation that was
21 known as DWC Installations until late 2002. Nasser Hamedani is the
22 chairman and chief executive officer of another corporation called
23 Two Dog Net. In late February, 2002, Nasser Hamedani signed a non-
24 binding letter of intent on behalf of Two Dog Net to purchase DWC
25 Installations' outstanding shares for \$300,000.

26 On March 20, 2002, Two Dog Net paid an initial deposit of
27 \$50,000 towards the acquisition price of DWC Installations. In

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1 July, 2002, a company named Shadrack Films acquired a controlling
2 fifty-one percent ownership interest in the stock of DWC
3 Installations through three payments totaling \$150,000 that came
4 from Two Dog Net. The other forty-nine percent ownership interest
5 was acquired in October, 2002 by "Nominees" selected by Nasser and
6 Sholeh Hamedani, who is one of Nasser Hamedani's daughters and was
7 the President of Two Dog Net.

8 Sholeh Hamedani owned the shares of Shadrack Films and became
9 the president and chief financial officer of DWC Installations when
10 Shadrack Films acquired control of that company during the summer
11 of 2002. The name of DWC Installations was then changed to The
12 Children's Internet. Sholeh Hamedani became the president of TCI.
13 TCI filed its first Form SB-2 registration statement with the SEC
14 in February, 2003. The SEC declared TCI's registration statement
15 to be effective in May, 2004. TCI's shares were approved for
16 listing on the OTC Bulletin Board in late December, 2004, and
17 started trading in mid-February, 2005.

18 Mr. Poyner is a resident of Boca Raton, Florida. He is the
19 sole officer, director and shareholder of a Florida corporation
20 called "Onyx Holdings." He is also the sole officer, director and
21 shareholder of a Florida corporation called "Onyx Securities."
22 During 2002, the period covered by this action, Mr. Poyner was not
23 licensed by the National Association of Securities Dealers or
24 registered with the SEC as a broker. During the period covered by
25 this action, Onyx Holdings and Onyx Securities were not registered
26 with the SEC as brokers or dealers.

27 Mr. Poyner was not an officer or director of TCI. He was not
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1 an officer or director of Two Dog Net. He was not an officer or
2 director of DWC Installations. He was not an officer or director
3 of Shadrack Films.

4 Mr. Poyner did not sell any of the TCI shares he owned until
5 after TCI's registration statement became effective in May, 2004
6 and after TCI's shares began trading on the OTC Bulletin Board in
7 February, 2005. Mr. Poyner played no role in drafting, reviewing,
8 editing, revising or commenting upon any registration statement or
9 filing with the SEC whether by TCI, DWC Installations, or any other
10 entity.

11 DAMAGES

12 The parties have agreed that, if you find Mr. Poyner liable on
13 any of the claims the SEC has made, the Court will determine the
14 damages or monetary penalties. Because this is a civil, not a
15 criminal case, there is no prison or jail penalty.

16 BURDEN OF PROOF

17 When a party has the burden of proof on any claim by a
18 preponderance of the evidence, it means you must be persuaded by
19 the evidence that the claim is more probably true than not true.

20 You should base your decision on all of the evidence,
21 regardless of which party presented it.

22 WHAT IS EVIDENCE

23 The evidence from which you are to decide what the facts are
24 consists of:

- 25 (1) the sworn testimony of any witness;
26 (2) the exhibits which have been received into evidence; and
27 (3) any facts to which the lawyers have agreed.

WHAT IS NOT EVIDENCE

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

(1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

(2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the Court's ruling on it.

(3) Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition, sometimes testimony and exhibits are received only for a limited purpose; where I have given a limiting instruction, you must follow it.

(4) Anything you may have seen or heard when the court is not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial

1 evidence is proof of one or more facts from which you could find
2 another fact. You should consider both kinds of evidence. The law
3 makes no distinction between the weight to be given to either
4 direct or circumstantial evidence. It is for you to decide how
5 much weight to give to any evidence.

6 **RULING ON OBJECTIONS**

7 There are rules of evidence that control what can be received
8 into evidence. When a lawyer asked a question or offered an
9 exhibit into evidence and a lawyer on the other side thought that
10 it is not permitted by the rules of evidence, that lawyer may have
11 objected. If I overruled the objection, the witness was permitted
12 to answer the question. If I sustained the objection, the witness
13 was not permitted to answer the question. If I sustained an
14 objection to a question, you must ignore the question and must not
15 guess what the answer might have been.

16 Sometimes I ordered that evidence be stricken from the
17 record and that you disregard or ignore the evidence. That
18 means that when you are deciding the case, you must not consider
19 the evidence that I told you to disregard.

20 **CREDIBILITY OF WITNESSES**

21 In deciding the facts in this case, you may have to decide
22 which testimony to believe and which testimony not to believe. You
23 may believe everything a witness says, or part of it, or none of
24 it. Proof of a fact does not necessarily depend on the number of
25 witnesses who testify about it.

26 In considering the testimony of any witness, you may take into
27 account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicts the witness's testimony;
- (6) the reasonableness of the witness's testimony in light of all the evidence; and
- (7) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

DEPOSITION TESTIMONY

When a person was unavailable to testify at trial, portions of the deposition of that person were used at the trial. A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded.

Deposition testimony is entitled to the same consideration and is to be judged, insofar as possible, in the same way as if the witness had been present to testify. In the case of Mr. Poyner's investigative testimony, you did not see a video recording. Instead, portions of the deposition transcript were read aloud, with stand-ins reading the questions and answers. Do not place any significance on the behavior or tone of voice of the persons reading those questions and answers.

FIFTH AMENDMENT PRIVILEGE

You have heard testimony that Mr. Poyner gave earlier in which he refused to answer certain questions based upon his Fifth Amendment privilege against self-incrimination. This privilege allows any witness in a criminal or civil case to remain silent so that their statements cannot be used against them.

Although entitled by the Fifth Amendment to remain silent, a party in a civil case would normally provide testimony in support of their claims and defenses, particularly if the testimony relates to a matter within the party's personal knowledge. As the fact finders in this case, you are allowed to -- but not required to -- treat any refusal by Mr. Poyner to answer a question on Fifth Amendment grounds as creating an inference that if he had testified, his testimony would have been harmful to his defense. In deciding whether to draw such an adverse inference against Mr. Poyner for refusing to answer a question on Fifth Amendment grounds, you should consider the totality of the circumstances.

Specifically, in this case, Mr. Poyner was questioned again later in a videotaped deposition, which you also saw, and he answered the questions asked of him.

EXPERT OPINION

You have heard testimony from persons who, because of education or experience, were permitted to state opinions and the reasons for those opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's

1 education and experience, the reasons given for the opinion, and
2 all the other evidence in the case.

3 **DEMONSTRATIVE EXHIBITS NOT IN EVIDENCE**

4 Certain demonstrative exhibits and displays not received into
5 evidence have been shown to you to illustrate information brought
6 out at trial. They are not themselves evidence or proof of any
7 facts. Demonstratives and displays are only as good as the
8 underlying evidence that supports them. If they do not correctly
9 reflect the facts or figures shown by the evidence in the case, you
10 should disregard these demonstratives and determine the facts from
11 the underlying evidence.

12 **OVERVIEW OF APPLICABLE LAW**

13 I will now explain the law that is applicable to this case.

14 **I. Selling Securities Without Being Registered as a Broker**

15 The SEC alleges that Mr. Poyner violated Section 15(a)(1) of
16 the Securities Exchange Act, which provides that a person engaged
17 in business as a broker who uses the mails or another
18 instrumentality of interstate commerce to effect any transactions
19 in the sale of securities must be registered with the SEC as a
20 broker. The SEC's claim is that Mr. Poyner illegally sold
21 securities of TCI from January, 2002 until around the fall of 2002,
22 and that these sales were illegal because Mr. Poyner was not
23 registered as a broker with the SEC, which the SEC claims he was
24 required to be under the law.

25 In order to find in favor of the SEC and against Mr. Poyner
26 for failing to register as a broker, you must be satisfied that the
27 SEC has established, by a preponderance of the evidence, the

1 following three elements:

2 First: That Mr. Poyner was not registered with the SEC or any
3 agency or entity with whom persons register as brokers. It is not
4 disputed that Mr. Poyner was not registered with the SEC as a
5 broker during the time period relevant to this action, and thus you
6 must take this element as having been proven.

7 Second: That Mr. Poyner used, or caused to be used, an
8 instrumentality of interstate commerce in an offer or sale of
9 securities. An instrumentality of interstate commerce includes
10 postal mail, e-mail, telephone, telegraph, telefax, interstate
11 highway system, internet and similar methods of communication and
12 travel from one State to another within the United States.

13 Third: That Mr. Poyner was engaged in the business of
14 effecting transactions in securities for the accounts of others as
15 a "broker," and that Mr. Poyner effected transactions in TCI
16 shares, or caused or attempted to cause others to purchase or sell
17 TCI shares.

18 A broker buys and sells securities for clients, usually for a
19 commission. A person is not required to register as a securities
20 broker if he acts only as a "finder." A "finder" is a person who
21 does not effect a securities transaction, but only brings together
22 parties who may engage in one. Mr. Poyner contends that he acted
23 only as a finder in this case, not as a broker.

24 You may consider the following factors to determine whether
25 Mr. Poyner regularly effected securities transactions so that he
26 had a duty to register as a broker, or if he instead was acting as
27 a finder so that he did not have a duty to register as a broker:

- 1 1. Whether Mr. Poyner's compensation was in the form of
- 2 commission payments (that is, a portion of the money
- 3 raised), rather than an employee's salary or wage.
- 4 2. Whether Mr. Poyner actively participated in locating
- 5 investors to purchase TCI stock, or stock of other
- 6 companies.
- 7 3. Whether Mr. Poyner made recommendations to potential
- 8 investors regarding the purchase of TCI stock.
- 9 4. Whether Mr. Poyner solicited the purchase of the stock of
- 10 other companies besides TCI.
- 11 5. Whether Mr. Poyner was actively involved in negotiations
- 12 between potential investors and TCI.

13 A person is not required to register as a securities broker if

14 he buys or sells securities for his own account, but not as a part

15 of a regular business.

16 The SEC does not need to prove that Mr. Poyner was aware that

17 he was violating the broker registration requirement. It is no

18 defense that Mr. Poyner did not know he was required to register.

19 **II. Selling Unregistered Securities**

20 The SEC's next claim is that Mr. Poyner illegally sold or

21 offered to sell securities which were not registered with the SEC

22 -- a violation of Section 5 of the Securities Act. In order to

23 prevail on this charge, the SEC must prove by a preponderance of

24 the evidence the following three elements:

25 First: That no registration statement was in effect as to the

26 TCI shares that were being offered or sold at the time Mr. Poyner

27 is alleged to have sold them. It is not disputed that a

1 registration statement had not been filed with the SEC at the time
2 Mr. Poyner is alleged to have sold them. Therefore, you must take
3 this element as having been proven.

4 Second: That Mr. Poyner, directly or indirectly, sold or
5 offered to sell TCI shares to investors. The SEC need not prove
6 that Mr. Poyner had direct contact with any of the investors or
7 that he acted as a broker. All that is required for the SEC to
8 prevail on this element is that you find that Mr. Poyner was a
9 necessary participant or a substantial factor in the sale or
10 offering of TCI shares. Thus, if you find that Mr. Poyner employed
11 or directed others to sell or offer to sell securities, or if you
12 find that Mr. Poyner conceived of and planned the scheme by which
13 the unregistered securities were offered or sold, then the SEC has
14 satisfied this element.

15 Third: That someone used an instrumentality of interstate
16 commerce in connection with the sale, offer to sell, or delivery of
17 the TCI shares. As I explained to you earlier, an instrumentality
18 of interstate commerce includes postal mail, e-mail, telephone,
19 telegraph, telefax, interstate highway system, internet and similar
20 methods of communication and travel from one State to another
21 within the United States.

22 You should note that, as was the case with the claim that Mr.
23 Poyner failed to register as a broker, the SEC does not have to
24 show that he acted with any particular state of mind. All that is
25 required for the SEC to prevail is that Mr. Poyner sold, offered,
26 or delivered TCI shares and in so doing used interstate
27 transportation or communication. It is no defense that Mr. Poyner
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1 did not know he had to register the TCI shares or that he relied on
2 the advice of a lawyer who told him that the shares did not need to
3 be registered.

4 **III. Securities Fraud (Knowing or Reckless)**

5 The SEC alleges that Mr. Poyner committed securities fraud, in
6 violation of Section 10(b) and Rule 10b-5 of the Securities
7 Exchange Act and Section 17(a)(1) of the Securities Act, in
8 connection with the sale of TCI shares to investors during the
9 period of January, 2002 to September, 2002. The SEC alleges that
10 Mr. Poyner failed to disclose to investors the amount of commission
11 in cash and stock that he would receive on the sales. The SEC
12 further alleges that Mr. Poyner made false representations to the
13 investors about how quickly they would be able to sell their shares
14 on a public securities exchange and make a profit. The SEC claims
15 that during the time period when Mr. Poyner was offering or selling
16 the TCI shares, the process had not even begun for registering
17 those TCI shares so that they could be sold on a securities market.
18 TCI did not have an effective registration statement for selling
19 its shares until May, 2004, and TCI's shares did not begin trading
20 in a public market until February, 2005.

21 To prevail on this claim of securities fraud, the SEC must
22 establish by a preponderance of the evidence the following four
23 elements:

24 First: That Mr. Poyner made, directly or indirectly, one or
25 more false or misleading statements of material fact, or omitted to
26 state material facts.

27 A misrepresentation is a statement of material fact that is
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1 false or misleading when it is made. A statement may be misleading
2 even if it is literally true, if the context in which the statement
3 was made caused the listener or reader to remain unaware of the
4 actual state of affairs.

5 An omission is a failure to disclose a material fact that must
6 be disclosed to prevent other statements that are made from being
7 misleading.

8 A factual representation concerning a security is material if
9 there is a substantial likelihood a reasonable investor would
10 consider the fact important in deciding whether or not to buy or
11 sell that security.

12 An omission concerning a security is material if a reasonable
13 investor would have regarded what was not disclosed as having
14 significantly altered the total mix of information he or she took
15 into account in deciding whether to buy or sell the security.

16 You must decide whether something was material based on the
17 circumstances as they existed at the time of the statement or
18 omission.

19 Second: That the misrepresentations or omissions of material
20 fact were made in connection with the sale of securities under
21 Section 10(b), or the offer or sale of securities under Section
22 17(a)(1). If you find that there was a relationship between the
23 allegedly fraudulent conduct and the sale of TCI shares, then you
24 should find that the statement or omission was made "in connection
25 with" such a sale. To prove a relationship, the SEC need only
26 prove that the fraud "touched" upon the transaction involving the
27 sale. The SEC need not prove that Mr. Poyner was acting as a
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1 broker for the sale.

2 Third: That Mr. Poyner made the misrepresentations or
3 omissions of material facts knowingly or recklessly. A person acts
4 knowingly when he makes an untrue statement with the knowledge that
5 the statement is false or with reckless disregard for whether the
6 statement is true. A person acts knowingly if he omits necessary
7 information with the knowledge that the omission would make the
8 statement false or misleading or with reckless disregard for
9 whether the omission would make the statement false or misleading.
10 "Reckless" means highly unreasonable conduct that is an extreme
11 departure from ordinary care, presenting a danger of misleading
12 investors, which is either known to the defendant or is so obvious
13 that the defendant must have been aware of it.

14 Fourth: That an instrumentality of interstate commerce or a
15 facility of a national securities exchange was used. As I
16 explained to you earlier, an instrumentality of interstate commerce
17 includes postal mail, e-mail, telephone, telegraph, telefax,
18 interstate highway system, internet and similar methods of
19 communication and travel from one State to another within the
20 United States. It is not necessary that a misrepresentation or
21 omission occur during the use of the instrumentality of interstate
22 commerce. All that is required is that such an instrumentality be
23 used by someone during some phase of the transaction.

24 **IV. Securities Fraud (Negligent)**

25 The SEC also claims that Mr. Poyner is liable for a violation
26 of Sections 17(a)(2) and (3) of the Securities Act. This violation
27 is similar to but not the same as the fraud claim I just described
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1 to you. With respect to any misrepresentations or omissions, if
2 you find that the SEC has established by a preponderance of the
3 evidence all of the elements of fraud, except that Mr. Poyner did
4 not act knowingly or recklessly, then you may still find that Mr.
5 Poyner violated the Securities Act, so long as you find that he was
6 negligent in making a misrepresentation or omission.

7 Negligence is different from the states of mind of "knowledge"
8 and "recklessness." "Negligence" involves a lesser standard of
9 wrongful intent and culpable state of mind than the "knowledge" or
10 "recklessness" that is required to prove a violation of Section
11 10(b) of the Securities Exchange Act or Section 17(a)(1) of the
12 Securities Act. Negligence is the doing of some act which a
13 reasonably prudent person would not do, or the failure to do
14 something which a reasonably prudent person would do, when prompted
15 by considerations which ordinarily regulate the conduct of human
16 affairs. It is, in other words, the failure to use ordinary care
17 under the circumstances. Ordinary care is that care which
18 reasonably prudent persons exercise in the management of their own
19 affairs, in order to avoid injury to themselves or their property,
20 or the persons or property of others. Ordinary care is not an
21 absolute term, but a relative one. That is to say, in deciding
22 whether ordinary care was exercised in a given case, the conduct in
23 question must be viewed in the light of all the surrounding
24 circumstances, as shown by the evidence in the case.

25 **DUTY TO DELIBERATE**

26 When you begin your deliberations, you should elect one member
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1 of the jury as your presiding juror. That person will preside over
2 the deliberations and speak for you here in court.

3 You will then discuss the case with your fellow jurors to
4 reach agreement if you can do so. Your answer to the questions on
5 the verdict form must be unanimous.

6 Each of you must decide the case for yourself, but you should
7 do so only after you have considered all of the evidence, discussed
8 it fully with the other jurors, and listened to the views of your
9 fellow jurors.

10 Do not hesitate to change your opinion if the discussion
11 persuades you that you should. Do not come to a decision simply
12 because other jurors think it is right.

13 It is important that you attempt to reach a unanimous verdict
14 but, of course, only if each of you can do so after having made
15 your own conscientious decision. Do not change an honest belief
16 about the weight and effect of the evidence simply to reach a
17 verdict.
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19 **USE OF NOTES**

20 Some of you have taken notes during the trial. Whether or not
21 you took notes, you should rely on your own memory of what was
22 said. Notes are only to assist your memory. You should not be
23 overly influenced by the notes.
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25 **COMMUNICATION WITH COURT**

26 If it becomes necessary during your deliberations to
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1 communicate with me, you may send a note through the marshal,
2 signed by your presiding juror or by one or more members of the
3 jury. No member of the jury should ever attempt to communicate
4 with me except by a signed writing; I will communicate with any
5 member of the jury on anything concerning the case only in writing,
6 or here in open court. If you send out a question, I will consult
7 with the parties before answering it, which may take some time.
8 You may continue your deliberations while waiting for the answer to
9 any question. Remember that you are not to tell anyone --
10 including me -- how the jury stands, numerically or otherwise,
11 until after you have reached a unanimous verdict or have been
12 discharged. Do not disclose any vote count in any note to the
13 Court.
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15 **RETURN OF VERDICT**

16 A verdict form has been prepared for you. After you have
17 reached unanimous agreement on a verdict, your presiding juror will
18 fill in the form that has been given to you, sign and date it, and
19 advise the Court that you are ready to return to the courtroom.
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